



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/165866

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 05, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a telephonic hearing was held on July 07, 2015. The record was held open post-hearing to allow an exchange of further documentation, which occurred.

The issue for determination is whether petitioner can get retroactive medical expense reimbursements for non-emergency transportation.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Tip Pom

Division of Health Care Access and Accountability

Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner has expenses that include transportation to non-emergency medical appointments.

3. On April 8 and 10, 2015 petitioner requested that [REDACTED], the MA contractor for non-emergency transportation in Wisconsin, provide her reimbursement for transportation to non-emergency medical appointments made on 10/31/14, 11/24/14, 12/22/14, 12/23/14, 12/29/15 (2), 1/12/15, 1/13/15, 1/19/15, 1/20/15 (2), 1/22/15, 1/23/15, 1/27/15, 2/5/15, 2/14/15, 2/16/15, 2/18/15, 2/20/15 (2), 3/4/15, 3/6/15 (2), 3/11/15, 3/13/15, 3/16/15, and 3/18/15.
4. On April 8 and 10, 2015 [REDACTED] issued notices of decision to petitioner stating that her requests were denied because they did not meet transportation protocols.

### **DISCUSSION**

Medical Assistance reimburses medical travel for eligible recipients if they obtain prior authorization. Wis. Admin. Code, §DHS 107.23.

The Wisconsin Administrative Code, §DHS 107.23(1)(d)2, states that MA will cover transportation expenses “if the transportation is authorized by the county or tribal agency.” §DHS 107.23(3)(c)1 provides the following limitation: “Non-emergency transportation of a recipient by common carrier is subject to approval by the county or tribal agency or its designee before departure.” Emphasis added; a “common carrier” is defined at §DHS 107.23(1)(d)1 as any mode of transportation except an ambulance or specialized medical vehicle. The Department’s *Medicaid Eligibility Handbook*, §21.4.2.4, reiterates that authorization must be made prior to departure. See *Medicaid Eligibility Handbook*, version 13-01, et seq, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. There are no stated exceptions in the Code for the requirement that the authorization be made prior to departure.

Petitioner testified that she was never told that she could be reimbursed for transportation expenses until she was at physical therapy appointment sometime in March or April 2015. The agency’s representative at hearing testified that agency procedure is to give new applicants a packet that includes explanations of requirements and benefits. Post-hearing this administrative law judge received a printout showing that petitioner was mailed her enrollment and benefits booklet at least on March 27, 2014 and May 18, 2015. In any event, there is nothing in the MA law requiring economic support workers to inform applicants of every possible benefit or deduction. Because there are no exceptions in the law, I must conclude that petitioner is not eligible for retroactive reimbursement because trips were not pre-authorized by the agency.

The Division of Health Care Access and Accountability indicated that these trips were also denied because she did not submit her trip logs within 60 days. The agency did not provide any legal authority for denying payment after 60 days. There is no such requirement in §107.23, so if it is anywhere it is probably in the agency’s guidelines, however nothing was given at hearing or post-hearing to show this is policy. Regardless, because the trips were not pre-authorized by the agency, the denial is affirmed.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The Division of Hearings and Appeals cannot order retroactive reimbursement of MA non-emergency transportation because there was no authorization prior to the trips.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 12th day of August, 2015

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\sKelly Cochran  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 12, 2015.

Division of Health Care Access and Accountability  
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